IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

WP(C).No. 10200 of 2007(L)

PETITIONER:

P.S.GOPAKUMAR, GOPALAVILASOM,
NEDUMPANA P.O., KANNAMALLOOR, KOLLAM.

BY ADV. SRI.D.AJITHKUMAR

RESPONDENTS:

1. THE DEPUTY DIRECTOR OF EDUCATION,
KOLLAM.

2. THE DISTRICT EDUCATION OFFICER,
KOTTARAKKARA.

3. THE MANAGER,
S.N.G.S.H.S., KADAKKODU, EDAKKIDAM P.O.,
KOLLAM.

4. REJI SAGAR D.R.,
DEVI BHAVAN, KODAKKODU, EDAKKIDAM P.O.,
KOLLAM.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
GOVERNMENT PLEADER SMT. M.R. SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/12/2007, ALONG WITH WPC NO. 16399 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.10200/2007

APPENDIX

EXT.P1: COPY OF APPOINTMNET ORDER OF THE PETITIONER DATED 7.11.2000 ISSUED BY R2.

EXT.P2: COPY OF THE ORDER DATED 13.11.2006 IN W.P.(C) NO.21053/2006

EXT.P3: COPY OF APPOINTMNET ORDER OF R4 DATED 5.2.2007.

EXT.P4: COPY OF THE REPRESENTATION DATED 19.2.2007 SUBMITTED BY THE PETITIONER BEFORE R3.

EXT.P5: COPY OF THE JUDGMENT DATED 23.2.2007 IN W.P.(C) NO.21053/2006.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)Nos.10200 & 16399 OF 2007

Dated this the 10th day of December, 2007

JUDGMENT

The petitioner in W.P. (C) No.16399/07 is an applicant for appointment to the post of Lower Grade Sanskrit Teacher in the third respondent's school, under Rule 9A of Chapter XXIVA of the Kerala Education rules, as the son and dependant of a deceased Peon of the same School, who died on 14.10.2000 while in service. At the time of death of the father, the petitioner was only 16 years old. He attained majority on 21.4.2002. His mother applied for an appointment under the Compassionate Employment Scheme before the first respondent, who by Ext.P5 letter informed the petitioner's mother that as and when the petitioner attains majority he can apply for compassionate employment before the Manager. Subsequently, by Ext.P7 dated 7.2.2005, the petitioner submitted an application for employment. By that time, the petitioner had already obtained qualification for appointment as a Lower Grade Sanskrit Teacher. While so a vacancy of lower grade Sanskrit Teacher arose in the

School on 1.7.2005. In reply to Ext.P7 application, the Manager by Ext.P8 letter informed the petitioner that his claim would be considered in the next arising vacancy of non-teaching staff in the School, on the ground that the petitioner's father was a Peon in the School. The petitioner filed Ext.P9 representation dated 10.11.2005 before the DEO, who by Ext.P10 letter dated 16.1.2006 directed the Manager to consider the petitioner's claim. In the meanwhile by Ext.P11 appointment order dated 1.8.2006, the Manager appointed the fourth respondent as Lower Grade Sanskrit Teacher in the School, in the vacancy, which arose on 1.7.2005. The petitioner filed W.P. (C) No.21053/06, seeking appointment as Lower Grade Sanskrit Teacher. In the meanwhile, a vacancy of Peon arose in the School. The Manager offered appointment to the petitioner in that vacancy. This court by Ext.R3 (a) passed the following order in W.P. (C) No.21053/06:

> "It is submitted by learned counsel for the petitioner that Manager has offered the post of Peon in the school to the petitioner though he had staked claim for the post of Junior Sanskrit Teacher. Learned counsel submits that petitioner is prepared to accept the offer and Join as Peon in the school without prejudice to his right to claim to the above post and also to challenge

> the appointment of respondent No.4 as Junior Sanskrit Teacher and also the contentions raised by him in Ext.P10 appeal preferred by him before the District Educational Officer. The above submission is recorded. It will be open to the petitioner to join duty as Peon in the above terms, if so advised".

Pursuant thereto, the petitioner joined duty as Peon in the School. Thereafter, by Ext.P12 judgment as amended by Ext.P13 order, this Court disposed of the writ petition holding that if the petitioner is aggrieved by the order appointing him as a Peon, it is open to the petitioner to ventilate his grievance in that regard. It is thereafter the petitioner has filed this writ petition seeking the following reliefs.

> i) to issue a Writ of Certiorari or such other appropriate writ, order or direction quashing Ext.P8 Letter dated 14-3-2005 issued by the 3rd respondent as it is illegal and void;
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> ii) to issue a Writ of Certiorari or such other appropriate writ, order or direction quashing Ext.P11 order dated 1-8-2006 issued by the 3rd respondent appointing the 4th respondent as Full Time Junior Sanskrit Teacher in S.N.G.S.H.S., Kadakkodu;
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> iii) to issue a Writ of Mandamus or order or direction to the Respondents 1 & 2 not to approve the appointment of the

> 4th respondent as Full Time Junior Sanskrit Teacher at S.N.G.S.H.S., Kadakkodu without considering the claim of the Petitioner for appointment in the said post under Rule 51(B) of Chapter XIV(A) K.E.R.
> iv) to issue a Writ of Mandamus or order or direction to the 3rd respondent to appoint the Petitioner as Full time Junior Sanskrit Teacher with effect from 1-8-2006 and to pay all benefits including arrears of salary."

2. W.P. (C) No.10200/2007 is filed by a Full Time Menial working in the School staking claim for appointment to the vacancy of Peon to which the petitioner in the other writ petition was appointed on the ground that as a Rule 43 claimant he is entitled to be preferred over the petitioner in the other writ petition, who is only a Rule 9A of Chapter XIVA claimant. He therefore seeks the following reliefs in his writ petition.

> " i) To call for the entire records leading to Ext.P3 and quash the same by issue of Writ of certiorari or appropriate writ or order.
> ii) To issue a writ of mandamus directing the respondent to appoint the petitioner with effect from 1-3-2006 against the vacancy of Peon that arose on 1.3.2006 in the third respondent's school."

3. The contention of the Manager is that by Ext.R3(c) dated 12.8.2006, the petitioner was directed to produce originals of the documents attached along with his application and also to produce consent letter signed by the widow of the deceased Peon relinquishing her claim for appointment duly witnessed by a Gazetted officer. It is subsequent to the same that the petitioner in W.P. (C) No.16399/07 produced the original documents as also the consent letter and therefore the petitioner was considered for appointment to the next arising vacancy, which was that of a Peon. In the meanwhile, the vacancy, which arose on 1.7.2005 had already been filled up by appointing the 4th respondent on 1.8.2006. He would further contend that under the Government Order relating to compassionate employment, an applicant cannot choose the post to which he can be appointed and he is entitled to appointment only in a Class III or a Class IV post, which has been given to the petitioner. He further submits that since the petitioner's father was only a Peon, he is entitled to appointment only to the post of non-teaching staff in the school. Regarding the claim of the petitioner in W.P.(C) No.10200/07, the contention of the Manager is that Rule 43

claim is available only to posts in a higher scale of pay and since the post of Peon and that of Full Time Menial are in the same scale of pay, the petitioner cannot claim promotion under Rule 43 as of right.

4. I have considered the rival contentions in detail. I shall first deal with the claim of the petitioner in W.P.(C) No.16399/07. The eligibility of the petitioner for appointment under Rule 9A of Chapter XXIVA of the Kerala Education Rule is not disputed before me. It is also not in dispute before me that the petitioner had in fact submitted Ext.P7 application before the Manager to which Ext.P8 reply has been given by the Manager. It is also not disputed before me that the petitioner is fully qualified to be appointed as a Lower Grade Sanskrit Teacher and that a vacancy of Lower Grade Sanskrit Teacher arose on 1.7.2005. The Manager further admits that the 4th respondent has been appointed to that post by Ext.P11 appointment order dated 1.8.2006 in the vacancy which arose on 1.7.2005. Therefore the first question to be considered is whether the petitioner's claim for appointment to the post of Lower Grade Sanskrit Teacher can be negatived on the ground that the petitioner has not produced original documents and consent letter from other dependants. The receipt of Ext.P7 is

admitted by the Manager and he has also replied to the same by Ext.P8. Ext.P8 is dated 14.3.2005. In respect to Ext.P7 application dated 7.2.2005 nothing is mentioned in Ext.P8 about non-submission of original documents or non-submission of consent letters from other dependants. What is stated therein is only that the petitioner's claim would lie only for appointment to the post of a non-teaching staff. It is by Ext.R3 (c) letter dated 12.8.2006 that for the first time the Manager directs the petitioner to produce original documents of which attested copies were attached along with the application and to produce consent letter signed by the widow of the deceased employee of the School. The duties of the Manager in the matter of appointment under Rule 51B of chapter XIVA, which corresponds to Rule 9A of Chapter XXIVA in respect of non-teaching staff, has been considered by a learned Single Judge of this Court in **Baiju Kumar** V. **D.E.O. Trivandrum [2003(3) KLT 240]**, wherein the learned Single Judge had held that it is the duty of the Manager to intimate the claimants regarding the availability of the vacancy and to offer appointment. It is also held that appointment cannot be denied on the plea that the dependant had not applied in time etc. This decision was upheld by a Division Bench of this Court

in W.A. No.1164/05. In this case after receipt of Ext.P7, it was the duty of the Manager to inform the petitioner about the legal formalities for enabling the petitioner to get appointment. The Manager has not done anything in this regard except to issue Ext.P8, that too after another person was appointed to the vacancy which has arisen after Ext.P7 application by the petitioner, stating that the petitioner is entitled to appointment only to the post of non-teaching staff. As such, the Manager cannot now take shelter under the plea that since the petitioner's application was not complete, the petitioner could not have been considered for the post at the relevant time.

5. The second contention is that since the petitioner's father was only a Peon in the School, the petitioner can aspire for appointment to only a post of non-teaching staff. The Manager could not point out any rule or provision which confines claim of a person to the same category of post to which his bread winner on whom he was dependant was working. A claim for appointment under Rule 9A of Chapter XXIVA or Rule 51B of Chapter XIVA of the K.E.R would lie to any post available in the School, to which the dependant of the deceased employee is qualified. In this case, the petitioner was fully qualified for appointment to the post of Lower Grade

Sanskrit Teacher. That being so, the Manager was duty bound to consider the petitioner's claim for appointment to the post of Lower Grade Sanskrit Teacher, as and when a vacancy in that post arose, before appointing anybody else. Admittedly, in this case a vacancy of Lower Grade Sanskrit Teacher arose on 1.7.2005.

6. The last contention raised by the Manager is that under the Compassionate Employment Scheme of the Government, which is applicable as per Rule 9A of Chapter XIVA, a dependant can aspire for appointment only to Class III and Class IV posts. Admittedly, the post of Lower Grade Sanskrit Teacher is a Class III post. Even otherwise in an aided School, where the categories of posts available are very limited, unlike in Government service, an applicant for compassionate employment cannot be pinned down to Class III and Class IV posts. Otherwise, the very provision for compassionate employment would not enure to the dependants in practice. Therefore I do not find any merit in any of the contentions raised by the Manager against the claim of the petitioner for appointment to the post of Lower Grade Sanskrit Teacher, which arose on 1.7.2005.

7. Accordingly, I quash Ext.P11 appointment order issued to the 4th respondent and direct the Manager to appoint the petitioner in his place. Order in this regard shall be passed and forwarded to the 2nd respondent for approval within two weeks from the date of receipt of a copy of this judgment, on receipt of which, the 2nd respondent shall pass appropriate orders thereon within one month from the date of receipt of the same. The appointment shall be with effect from 1.8.2006.

8. Now, I shall come to W.P. (C) No.10200/07. Now that W.P.(C) No.16399/07 has been allowed, the post of Peon held by the petitioner in that writ petition falls vacant and the petitioner in the writ petition can aspire for promotion to that post. The contention of the Manager is that since under Rule 43 promotion can only be to a higher scale of pay and since both the posts of Peon and Full Time Menial are in the same scale of pay, the petitioner cannot aspire for promotion under Rule 7 of Chapter XXIVB. This contention cannot be countenanced for the reason that Explanation 1 to Rule 2 of Chapter XIVA makes it abundantly clear that the post of sweeper and other staff mentioned in Rule 1 shall be feeder categories for appointment to the post of Peon. Admittedly, the petitioner is a Full Time Menial working in the School.

That being so, he is entitled to promotion to the post of Peon by virtue of Rule 7 of Chapter XXIVB of the K.E.R. As such, the petitioner in this writ petition is entitled to be promoted to the vacancy of Peon, to which the petitioner in W.P. (C) No.16399/07 had been appointed which has been rendered vacant in view of allowing of that writ petition. The Manager is therefore directed to issue an appointment order in favour of the petitioner with effect from the date of occurrence of vacancy and forward the same to the DEO, Kottarakkara for approval within two weeks from the date of receipt of a copy of this judgment. The District Educational Officer, Kottarakkara shall pass appropriate orders thereon within a further period of one month from the date of receipt of the same.

These writ petitions are allowed as above.

S. SIRI JAGAN, JUDGE

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